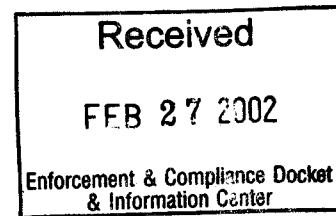


City of Independence  
Water Pollution Control Department  
P.O. Box 1019  
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February 26, 2002



To: [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov)

Re: Docket Number EC-2000-007  
Comments on Proposed Rule: Establishment of Electronic Reporting; Electronic Records

The following comments are submitted on behalf of the City of Independence, Missouri, Water Pollution Control Department, which administers the City's approved industrial pretreatment program and operates a 10-mgd Publicly Owned Treatment Works (POTW), Rock Creek Waste Treatment Facilities. The City of Independence is a member of the Association of Metropolitan Sewerage Agencies (AMSA), and we support the comments submitted by AMSA on this proposed rule.

#### Electronic Records

The Government Paperwork Elimination Act (GPEA) calls for Executive agencies to provide "for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper . . . ." GPEA directs EPA to ensure that its programs do not prevent the electronic maintenance or submission of information, nothing more. EPA has coupled provisions related to security with the regulations necessary to implement the GPEA, producing consequences that were probably not intended.

GPEA addresses electronic records *substituting* for paper records. EPA's definition of electronic record in the proposed rulemaking is too broad and appears to go beyond the scope of the law. The proposed rulemaking could be interpreted to apply to any record or datum that involves a computer in its lifecycle, even if it has been printed out and is maintained in hard copy. If EPA finalizes the rule as proposed, with the current definition of electronic record, every piece of information or data that is generated, calculated, or maintained by electronic means would be subject to the requirements. The various parts of Title 10 that would be amended by the proposed rulemaking appear to prohibit electronic recordkeeping that does not comply with all the prescribed procedures, whether or not electronic recordkeeping is used to substitute for paper records or merely as a supplement to paper records.

EPA states that the proposed requirements are voluntary. In reality, the requirements would only be voluntary for those facilities that are currently relying on paper-based recordkeeping systems. The rule does not require facilities currently using paper-based systems to use electronic systems. Rather, any facility that generates, calculates, or maintains information electronically would have to ensure that its systems comply with the proposed requirements to remain in compliance. EPA's proposal appears to overlook the fact that many regulated entities, including POTWs, are already maintaining environmental information electronically.

The requirements as written would be extremely burdensome and will hinder use of electronic recordkeeping. Instead of encouraging paperwork elimination where practicable, we believe EPA's proposed rule would have the opposite effect.

The provisions requiring regulated entities to prevent electronic signatures from being detached, copied, or otherwise compromised may require us to implement new systems designed solely to comply with the proposed regulations. Where current systems can be upgraded, we would incur significant costs to gain minimal if any increase in security. There is no evidence to suggest that records currently maintained electronically suffer from lax security. Security is maintained in our electronic records by limiting access to the programs via password based security schemes, standard industry practice. Existing systems that are capable of limiting access to a record bearing an electronic signature should be sufficient.

The provisions requiring the use of secure, computer generated, time-stamped audit trails to automatically record the date and time of entries, modifications, and deletions would require us to modify or upgrade existing systems at significant expense. Some systems may not be capable of handling such a function and may need to be replaced entirely. Again, there is no evidence to suggest that records currently maintained electronically suffer from lax security. Existing systems and management practices that control access to a record and that ensure a record's accuracy are sufficient.

EPA's requirement that electronic records be searchable and retrievable for the entire length of the retention period goes well beyond current information technology backup practices. Normally data are backed up on tape drives or some other similar storage media. As systems age and go out of service, the data are maintained on the back-up media. In order for these data to remain searchable and retrievable for the life of the retention period, the old, outdated system would need to be maintained.

EPA's requirements for record archival to preserve the context, meta data, and audit trail are not compatible with existing archival systems. Depending on the complexity of the data and whether any calculations are preformed, we may be forced to maintain an outdated application to preserve the record as it was originally created.

Like many other POTWs, Rock Creek Waste Treatment Facilities use electronic means of generating, calculating and maintaining information throughout our operations. We have made substantial investments in information management systems for laboratory, operations, maintenance, and our pretreatment program as well as a continuous emissions monitoring system for our sewage sludge incinerator. We are in the design phase of implementing a SCADA system utilizing programmable logic controllers (PLCs) to increase operational efficiency and control.

The proposed requirements would apply to POTWs both as regulated entities (complying with the recordkeeping provisions) and as regulators (administering pretreatment programs). POTWs, therefore, may incur significant costs to ensure compliance with both components of the rule. Agencies that administer an approved pretreatment program must oversee the activities of

numerous industrial users and take actions necessary to ensure compliance with their own NPDES permits. Some POTWs must manage large volumes of information relating to the implementation of their pretreatment program. Industrial users newly subject to a categorical pretreatment standard are required to submit a report to the POTW. In addition, industrial users are required to submit periodic compliance reports at least twice a year (more frequent for larger industrial users) and must notify the POTW of any potential problems or violations that are detected. Industrial users that are not subject to categorical standards also report to the POTW. Like many other POTWs we use electronic records to manage our pretreatment program, and many industrial users submit reports to us that were produced using a computer.

We would be severely impacted by this rule. Each of our software programs would have to be rewritten to comply. We have multiple information management systems, not a single system. Correspondence and reports are generated with word processing software. We also use spreadsheet and database programs. Different programs are used for management of laboratory and operational data, generation and tracking of maintenance work orders, pretreatment program documents, and the sewage sludge incinerator continuous emissions monitoring system. The SCADA system we plan to install will add another electronic records program. All these programs would need to be upgraded to comply with the proposed rule, and the costs would be prohibitive. We would be forced to revert to paper-based systems either temporarily, while upgrades are made, or permanently, if modifications are too expensive.

For example, our water pollution control laboratory maintains extensive paper records. Samples received by the laboratory are manually recorded in a logbook. Chain of custody sheets, bench sheets, and analytical summary reports are retained in the form of paper records. The laboratory also enters analysis results into a database that is used to prepare monthly NPDES discharge monitoring reports, among other things. The database program is used to produce paper reports that are signed and submitted to the state permitting authority. Paper copies of the reports are kept on file. Still, it appears that the proposed rule would prohibit us from using the database, since it does not provide an audit trail and archiving for each data entry. Instead, we would have to complete discharge monitoring reports using a pen or pencil. The same database is used to produce paper records and prepare paper reports required under the Clean Air Act and under sludge regulations. It would greatly reduce our efficiency if all records had to be maintained by paper and pencil without using computers. Data would have to be averaged and totaled manually, which would be very time-consuming.

We are also required to operate a continuous emissions monitoring system (CEMS) to measure total hydrocarbons (THC) emissions from our sewage sludge incinerator. The programmable logic computer processes raw data and calculates averages, and it applies oxygen and moisture correction factors to calculate corrected THC. Data is generated each 15 seconds and averaged for each minute, hour, three hours, day and month. It is not feasible to archive all the data with a time-stamped audit trail. We comply with recordkeeping and reporting requirements by producing paper printouts from the CEMS.

#### Electronic Reporting

Electronic reporting has the potential to save time both for regulated entities and the agencies

receiving their reports. We have filed Tier 2 reports electronically, although we were also required to print the reports and mail hard copies with appropriate signatures.

In Subpart D of the proposed rule, which regulates electronic reporting under EPA-approved State programs, section 3.2000(b)(3) requires that electronic documents be submitted by the authorized signature holder and not some other person. The signature required on environmental reports is typically that of a corporate officer, or in the case of a government agency, a high level government official. Our department Director signs our environmental reports, but he does not type the label on the envelope to mail the document to the regulatory agency. It is impractical to expect high level officials to download environmental reports and submit them to the State. In contrast, Subpart B, which addresses electronic reporting to EPA, requires the authorized signature to be attached but does not specify that the same person must submit the document. The same flexibility should be allowed in approved State programs.

#### Recommendations

1. In its January 3, 2002, *Federal Register* notice extending the comment period, EPA seeks comment on whether or not the recordkeeping provisions in subpart D of the proposed rule should be withdrawn and addressed in a separate rulemaking. EPA should withdraw the recordkeeping provisions of the proposed rule to provide for more meaningful dialogue with stakeholders to gauge how to remove barriers to electronic recordkeeping.
2. EPA should clearly limit the scope of any electronic recordkeeping rule to electronic records that *substitute* for paper records for compliance purposes. Where paper records are maintained that satisfy recordkeeping requirements, EPA should not attempt to regulate electronic media used for data management.
3. EPA also must consider requirements of the Federal Electronic Signatures in Global and National Commerce Act ("E-Sign") passed in June 2000.
4. EPA should be more flexible in its electronic reporting proposal to ensure that POTWs and other agencies which currently have an electronic reporting mechanism in place can continue using that system without interruption and without being in violation. Rather than prescribing a set of conditions that must be met, EPA should set minimum standards that allow POTWs and other regulatory agencies to use their existing security infrastructures to comply with the secure submission requirements. By allowing agencies to use their existing systems, the cost and disruption to their activities will be minimized.

Thank you for considering our comments. If you have any questions, please feel free to contact me.

Sincerely,

Dorris L. Bender

## **Environmental Compliance Manager**



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02/26/02 05:14 PM

To: docket.oeca@epamail.epa.gov  
cc: chornback@amsa-cleanwater.org  
Subject: Comments on Docket No. EC-2000-007

Please see attached comments.

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